

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DEANNA KAY COLLINS,	:	
	:	
Plaintiff	:	
	:	
vs.	:	CIVIL NO. 1:CV-11-0355
	:	
LINCOLN CAVERNS, INC.,	:	
PATRICIA ANN DUNLAVY,	:	
MARION DUNLAVY,	:	
Defendants	:	

*MEMORANDUM*

The pro se plaintiff, Deanna Kay Collins, filed this action against Lincoln Caverns, Inc., Patricia Ann Dunlavy, and Marion Dunlavy, alleging, among other things, copyright infringement, fraudulent misrepresentation, and invasion of privacy. Plaintiff has filed motions for default under Federal Rule of Civil Procedure 55 against all defendants. Defendants in turn filed a motion for extension of time to respond to the complaint and a motion to dismiss pursuant to Rule 12(b)(5) for insufficient service of process.<sup>1</sup>

We can enter a default pursuant to Rule 55(a) if a defendant has failed to timely file a responsive pleading, or otherwise defend against the complaint. However, the defendant must first have been properly served with process. *Dougherty v. Snyder*,

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<sup>1</sup> Defendants motion for extension of time was filed on April 1, 2011.

No. CV-10-1071, 2010 WL 2640182, at \*1 (M.D. Pa. June 30, 2010). It is undisputed that plaintiff attempted service by mailing copies of the complaint by certified mail to each of the defendants. (doc. 3.)

Plaintiff's attempt at service by certified mail was improper. Federal Rule of Civil Procedure 4 governs service in federal court. Unless an individual defendant waives service under Rule 4(d)(3) and (4), service may not be made by mail. See Fed.R.Civ.P. 4(e); *Id.* Rule 4(e)(1) allows for alternative forms of service under state law. Collins incorrectly concludes that service was proper because 246 Pa. Code Rule 300 allows a complaint to be served by certified mail. However, this rule of civil procedure only applies in the minor courts of Pennsylvania. The federal rules clearly state that service may be accomplished by following state law "for serving a summons in an action brought in the *courts of general jurisdiction* in the state where the district court is located." Fed.R.Civ.P. 4(e)(1)(emphasis added). The courts of general jurisdiction in Pennsylvania are the court of common pleas, which are governed by the Pennsylvania Rules of Civil Procedure. See 42 Pa.C.S.A. § 931. Under these rules, service generally has to be accomplished by the sheriff. Pa.R.Civ.P. 400(a). For this type of civil action, Pennsylvania does not allow service by mail upon individuals, See Pa.R.Civ.P. 402, or on corporations, See Pa.R.Civ.P. 424.<sup>2</sup> Similarly, Federal Rules do not provide for service on Pennsylvania corporations through the mail. See Fed.R.Civ.P. 4(h). Since the summons and

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<sup>2</sup> Pennsylvania allows service by mail when the defendant is out of state. See Pa.R.Civ.P. 404(2).

complaint were not properly served, we do not have jurisdiction over the defendants.

*Adams v. Allied Signal General Aviation Avionics*, 74 F.3d 882, 885 (8th Cir. 1996). For this reason, we will not address the other issues presented in defendants' motion.

Based on the preceding, we will deny the motions for default. We note that under Federal Rule of Civil Procedure 4(m), plaintiff has 120 days from the filing of the complaint to effect service so plaintiff still has time to do so as the complaint was filed on February 22, 2011.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge

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*O R D E R*

AND NOW, this 19th day of May, 2011, upon review of Defendants' motion to dismiss, and pursuant to the accompanying Memorandum, it is ordered that:

1. Defendants' motion for an extension of time (doc. 6) is granted. Defendants' response is deemed timely filed.
2. Defendants' motion to dismiss pursuant to Rule 12(b)(5) (doc. 10) is granted without prejudice to plaintiff properly serving the defendants.
3. Plaintiff's motions for default (doc. 8, 18) are denied.
4. Defendants' motion to quash default (doc. 13) are dismissed as moot.

/s/William W. Caldwell  
William W. Caldwell  
United States District Judge